BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

REPLY COMMENTS OF THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Dated: July 20, 2005

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SUMMARY

The Massachusetts Department of Telecommunications and Energy ("MDTE") addresses two issues raised by the FNPRM on March 3, 2005 and by certain parties' comments. The MDTE argues that (1) negotiated intercarrier compensation arrangements should be the primary basis for intercarrier compensation reform; and (2) intercarrier compensation reform should not increase the size of the federal high cost universal service fund.

I. DISCUSSION

A. Negotiated Intercarrier Compensation Arrangments Should be the Primary Basis for Intercarrier Compensation Reform

Contrary to the position of many commenters in favor of a new unified approach to intercarrier compensation, the MDTE agrees with certain commenters that negotiated, commercial agreements should be the primary basis for industry-wide reform, rather than a regulatorily-imposed national "one size fits all" scheme and that any new regulatory mechanism should be optional for those carriers (and state commissions) that can not reach a negotiated resolution . See Comments of New York Public Service Commission ("NYPSC") at 4-5; Verizon Comments at 1-3, 6-15. As the NYPSC stated in its comments, "Congress and the Commission have indicated a preference for relying on commercial agreements, rather than on regulatory mandates, to establish appropriate intercarrier relationships . . . . Such arrangements allow parties in a competitive environment to develop solutions tailored to their particular needs. Such procedures necessarily imply that solutions, including rates and rate structures, may vary from company to company and even within a single company's service territory. Even where regulatory assistance is required, such as in arbitrating those agreements, there need be no expectation of nationally uniform outcomes . . . . The Commission should not seek to impose, even as a default, nationally uniform intercarrier compensation rates. Instead, the Commission should seek an approach that allows carriers (and, where necessary, states) the flexibility to identify and solve their own intercarrier compensation problems." NYPSC Comments at 4-5; see also Verizon Comments at 1-2 ("A market-based approach, relying upon negotiated, commercial agreements, is the best long-term solution to ensuring the efficiency of the telecommunications markets in the face of substantial technological change. Such an approach permits carriers to craft interconnection agreements that reflect the particular characteristics of the traffic exchanged between them. Moreover, market-based agreements are inherently more flexible and can be modified more easily than complex regulatory regimes, enabling carriers to adapt more quickly to emerging technologies . . . . The Commission should abandon such rigid regulatory mandates [e.g., bill-and-keep] or intercarrier compensation and instead allow interconnection arrangements to be based on market forces and negotiated commercial agreements . . . . Any transitional default rule should preserve existing negotiated arrangements and facilitate additional ones."). In Massachusetts over the past five years, several carriers have successfully negotiated and implemented comprehensive intercarrier compensation agreements with Verizon, demonstrating that a market-based commercial approach can be achieved. See Amendment to Interconnection between Level 3 and Verizon dated March 30, 2001; Amendment to Interconnection Agreement between MCI and Verizon date February 6, 2003. We note that intercarrier compensation matters may require a greater degree of attention in certain states other than Massachusetts, because there are only a few very small rural ILECs operating in Massachusetts and Verizon has rebalanced rates, including reducing switched access rates to interstate levels. There is no compelling reason to suppose that carriers need a new regulatorily-imposed intercarrier compensation mechanism. In fact, such a mechanism may actually create more problems than it solves.

B. Intercarrier Compensation Reform Should Not Increase the Size of the Federal High Cost Fund

In the FNPRM, the FCC stated that, "[p]reservation of universal service is another priority under the Act and we recognized that fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime." The Commission further stated that: "Any proposal that would result in significant reductions in intercarrier payments should include a proposal to address the universal service implications, if any, of such reductions. In particular, many rural LECs collect a significant percentage of their revenue from interstate and intrastate access charges. Because of the high costs associated with serving rural areas, we must be certain that any reform of compensation mechanism does not jeopardize the ability of rural consumers to receive service at reasonable rates." FNPRM at ¶ 32. As a result, the Commission sought comment on the universal service implications to intercarrier compensation reform. Id. at ¶¶ 98-115. In particular, the FCC asked whether ILECs, particularly rural ILECs, should be allowed to offset revenue losses from reductions in switched access charges with alternative cost recovery mechanisms, such as increased subscriber charges or universal service funding. Id.. In addition, the FCC sought comment on whether creation of alternative funding mechanisms should be created through federal funding or whether states would be responsible for establishing the alternative cost recovery mechanisms. Id.

The MDTE agrees with certain commenters that federal universal service funding not be increased to offset revenue reductions for ILECs caused by the changes in intercarrier compensation, for example, reductions in switched access charges. See Comments of the NYPSC at 5-6; Comments of the New Jersey Board of Public Utilities at 5; Comments of the Public Utilities Commission of Ohio at 22-26. As the NYPSC stated in its comments:

> While such revenue losses need not be a foregone conclusion, if they do occur, federal universal service support should not be regarded as the sole, or even primary, source of replacement revenues. It is especially important that federal universal service funding not be used as a mechanism to shield significant portions of the ILECs' revenues from competitive erosion. Section 254 of the

> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act) provides that federal universal service funding is to be used only to support those services designated for support and then only toward achieving the goals of affordable and reasonably comparable rates. Absent a determination that an individual eligible telecommunications carrier requires additional federal universal service funding support to achieve affordable and reasonably comparable rates, it would be inappropriate to provide such funding simply to replace lost revenue streams . . . . To the extent that a carrier's intercarrier compensation revenues would be reduced by regulatory action, it should be provided an opportunity to attempt to recover lost revenues through other rates, including subscriber line charges, basic local rates, or any other appropriate rate design, but should not be guaranteed revenue recovery by in effect charging its competitors' customers higher universal service surcharges.

Comments of NYPSC at 5-6.

As the MDTE has pointed out in the past, "[u]niversal service policy should be designed to maintain or increase subscribership – not to transfer wealth from low-cost to high-cost regions." Reply Comments of the Massachusetts Department of Telecommunications and Energy at 2, CC Docket Nos. 96-45 and 97-160, and DA 98-715 (May 29, 1998). The mandate under Section 254(b)(3) of the Act that rates be reasonably comparable between rural and urban areas within a particular state does not mean that rural ILECs must receive increased universal service funding to replace reductions in existing intercarrier compensation for purposes of guaranteeing that their rates are comparable with rates of ILECs in lower-cost states. See id. ("Some interested parties appear to take the Act's mandate that rates be "reasonably comparable" in both rural and urban areas as an invitation to extend the mandate of universal service from ensuring that all citizens have access to affordable telecommunications services to ironing out all (or a substantial portion of) cost differences between states and between urban and rural areas").

Rather than burdening the federal high cost fund, offsets to revenue reductions should be addressed through state cost recovery mechanisms, including increases in subscriber charges and increases in state universal service funds. If high-cost rural carriers can replace lost revenue through higher charges on subscribers that have the ability to pay such higher charges, then increases to the federal high-cost fund may not even be necessary. See id. ("In order to preserve the traditional function of universal service policy, support policies should take into account *need* as well as *cost*. Otherwise, universal service support could result in low-income urban and suburban customers subsidizing high-income rural customers. The principal goal of high-cost policies should be to provide support to needy customers in high-cost areas. The Act's mandate to ensure that rates are "reasonably comparable" in rural and urban areas should be viewed through the prism of universal service goals, in that rates should be *reasonably comparable in terms of affordability* (which, by definition, encompasses need as part of the analysis), not in terms of absolute rate levels.").[1]

II. CONCLUSION

In summary, the MDTE recommends that in considering reforms to the existing intercarrier compensation rules, the FCC should provide that (1) negotiated intercarrier compensation arrangements be the primary basis for intercarrier compensation reform; and (2)

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[1] It would be particularly unfair to consumers in low-cost states where retail rate rebalancing has already occurred to have to pay higher universal service charges to fund retail rate rebalancing for ILECs in rural states (in order to offset intercarrier compensation revenue reductions) that have been slow to address the mandate of Section 254(b)(5) for removing universal service subsidies from retail rates.

intercarrier compensation reform should not increase the size of the federal high cost universal service fund.

Respectfully submitted,

Commonwealth of Massachusetts
Department of Telecommunications and Energy

By:

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